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May 10, 2017

The Honorable Rod Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Deputy Attorney General Rosenstein:

We are writing to request that you appoint a special prosecutor to investigate possible collusion between the Donald Trump for President Campaign and Russia. As you know, Attorney General Jeff Sessions recused himself from all matters related to the Russian collusion investigation. On April 4, 2017 we wrote a letter to then Acting Deputy Attorney General Dana Boente requesting appointment of a Special Counsel. Before Mr. Boente could respond, you were confirmed as Deputy Attorney General. We are now renewing our request to you for appointment of a Special Counsel.

As former prosecutors, we know that governmental investigations must be independent and free of conflicts of interest. Because you serve at the pleasure of the President, it is our belief that you have a conflict of interest and cannot exercise true independence into an investigation that may implicate the President. Moreover, your significant role in the firing of FBI Director James Comey—who was leading a counterintelligence investigation into possible collusion between Trump associates and Russia—has placed you into direct conflict with the FBI's counterintelligence investigation. Those are two of the reasons we request that you appoint a Special Counsel to investigate any collusion with Russia.

The disclosure that President Trump's first National Security Advisor, Michael Flynn, has asked for immunity provides a third reason why you need to appoint a special prosecutor. We support the ongoing investigations by the relevant committees in the House and the Senate, as well as the Protecting Our Democracy Act. Congress, however, cannot grant immunity from prosecution on behalf of the Department of Justice.¹ Only the Department can make that decision, which is why we need a Special Counsel to decide.

Based on the above reasons, we believe that Title 28 of the Code of Federal Regulations (CFR) requires you to appoint a Special Counsel. Section 600.1 states:

¹ We note that in the Watergate scandal, White House Counsel John Dean was granted use immunity from the U.S. Senate and also prosecuted by the Department of Justice.

The Attorney General, or in cases in which the Attorney General is recused, the Acting Attorney General, *will* appoint a Special Counsel when he or she determines that criminal investigation of a person or matter is warranted and—

(a) That investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances; and

(b) That under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.” CFR § 600.1 (emphasis added).

The factors set forth in Section 600.1 of the CFR are met in this case. The investigation into possible Russian collusion may implicate President Trump and Attorney General Sessions. Your present position is dependent on the President not firing you. President Trump has shown no hesitation in firing Department of Justice officials who stand up to him, as demonstrated by his firing of Acting Attorney General Sally Yates, US Attorney Preet Bharara and now FBI Director Comey. You have a built-in-conflict of interest and cannot exercise independence for an investigation that may implicate either of your bosses (the Attorney General or the President of the United States), upon whom you depend for your employment.

Your significant role in the termination of FBI Director Comey also places you into a conflict situation with the FBI's counterintelligence investigation and presents an extraordinary circumstance. It would be reasonable to assume FBI counterintelligence agents—who are investigating the President's associates and perhaps the President himself—may no longer trust you because you helped fire their leader at the bidding of the President.

The public interest also demands that a special prosecutor be appointed. There is no more important matter to our nation than the issue of whether or not the Trump campaign colluded with Russia. At stake is the legitimacy of the Presidency and whether high crimes occurred. In the Watergate scandal, there were investigations both by Congress as well as a special prosecutor. In Watergate, Democratic National Committee (DNC) documents were stolen but never revealed to the public in an attempt to alter an election. In this case, DNC emails were stolen and disclosed to the public by the Russians. If the Trump campaign colluded with the Russians, then the scale of the current scandal would be far greater than Watergate.

The astonishing development that President Trump's former National Security Advisor is seeking immunity adds urgency to our request. As former prosecutors, we know that people normally request immunity if they believe they have committed, or are likely to be prosecuted for, a crime. We need a Special Counsel who can exercise true independence in the Russia collusion investigation and make decisions on issues such as immunity, whether the request comes from General Flynn or potentially other witnesses.

We ask you to follow the Code of Federal Regulations and appoint a Special Counsel to investigate possible collusion between the Trump campaign and Russia. Thank you for your attention to this critical matter.

Sincerely,



Ted W. Lieu
Member of Congress



Kathleen Rice
Member of Congress



Stacey Plaskett
Member of Congress